

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Misc. No.M- 5707 of 2017(O&M)

Date of Decision: March 8 , 2017.

Virender @ Sunder

..... PETITIONER (s)

Versus

State of Haryana

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The petitioner prays for bail pending trial in FIR No.76 dated 19.10.2016 under Sections 120B/323/376/376(2)(N)/376D/377/506 IPC registered at Police Station Women Hisar, District Hisar. Offence punishable under Section 377 IPC has been deleted and offences punishable under Sections 3/4/5/6 of the Immoral Traffic (Prevention) Act have been added.

It is contended that the petitioner has been falsely implicated in

this case with ulterior motives. He was not named at the first instance in the FIR in which a number of other persons have also been named. In a supplementary statement of the prosecutrix recorded on 21.10.2016, she named the present petitioner while stating that after inquiring at her own level, she discovered the name of the petitioner, who is alleged to be the owner of Hotel Bagwan in the FIR. He is alleged to have violated the prosecutrix one and half years prior to the lodging of the FIR. Learned senior counsel for the petitioner vehemently argues that the petitioner has been implicated being well-placed, at the behest of the maternal uncle (Mama) of the prosecutrix who is a habitual offender. No test identification parade was conducted in which the petitioner was identified by the prosecutrix. The petitioner is the owner of Hotel Plaza and not Hotel Bagwan. It is submitted that there is no explanation as to why the matter was not reported for one and a half years. Furthermore, the Challan/final report under Section 173 Cr.P.C. in this case has already been presented. The petitioner has been in custody since 22.10.2016. Nothing is to be recovered from him. No useful purpose would be served by keeping the petitioner in custody. Therefore, this petition be allowed.

Learned counsel for the State, on instructions from ASI Kamla, Police Station Women, Hisar, verifies that the petitioner is the owner of Hotel Plaza and not Hotel Bagwan. It is not denied that apart from the supplementary statement of the prosecutrix recorded on 21.10.2016, there is no other evidence available qua the present petitioner. The other Hotel owners mentioned in the FIR have not been proceeded against. It is affirmed that the

maternal uncle of the prosecutrix is involved in a number of criminal cases, though it is submitted that this fact would have no bearing on the present case.

I have heard learned counsel for the parties and have gone through the file.

A perusal of the FIR reveals that allegations have been raised by the prosecutrix against a number of persons including Hotel owners in the city of Hisar. The petitioner has not been named therein. Mention is made of owner of Hotel Bagwan. In the supplementary statement recorded on 21.10.2016, the prosecutrix has stated that she alongwith her maternal uncle had come to participate in the investigation. After having inquired at her own level she found the name of the owner of Hotel Bagwan to be Varinder son of Kitab Singh i.e., the present petitioner. Translation of supplementary statement (Annexure P2) reads as under:-

“Stated that I am resident of above mentioned address and in pursuance to First Information Report, told that today I alongwith you in the present case, I and my maternal uncle (mama) Naresh Khurana have remained joined in investigation. You as per my demarcation have prepared the spot site plan of Bagwa Hotel, Delhi Road bye pass, Hisar and inspected the spot. After that in Rishik Hotel, Hisar as per my demarcation inspected the spot. After that spot inspection of Samrat Hotel and General Hospital, Hisar was done as per my asking and now you have taken me near Kartik Hotel. I, after my complete satisfaction have told you that I never visited Kartik Hotel nor any person committed rape with me here. I had got written the name of Kartik Hotel under misunderstanding. Now, I have also inquired at my own level that about 1 ½ years back the owner of Bagwa Hotel who had

committed rape upon me, his name is Varinder s/o Sh. Kitab Singh, caste Jat, r/o Saatroad, Khaas, who is now residing in Sector-13, Hisar and as per the asking of Meera w/o Narender @ Rinku, caste Punjabi and Shobha residents of Sheetla Mata Mandir Street, Padav Chowk, Hisar, above Varinder forcibly committed rape upon me and on telling anyone had threatened to kill me. Rest of the persons who had forcibly committed rape upon me I will also tell their names to you after inquiring on my own level.”

It is not denied that there is no other evidence available on record against the present petitioner except the abovesaid supplementary statement of the victim. Learned counsel for the State has verified that the petitioner is not the owner of Hotel Bagwan. Trial of the case is likely to take long. It is not disputed that the charges have been framed against the present petitioner on 20.01.2017. There are twenty (20) prosecution witnesses to be examined.

There are no allegations on behalf of the State that petitioner is likely to abscond or that he is likely to dissuade the witnesses from deposing true facts in the Court, if released on bail. The petitioner is not involved in any other criminal case. Further incarceration of the petitioner is not called for in the present factual matrix.

Keeping in view the facts and circumstances of this case but without commenting upon or expressing any opinion on the merits of the case, this petition filed by Virender @ Sunder is allowed. The petitioner shall be released on bail pending trial subject to his furnishing requisite bail bonds and surety bonds to the satisfaction of the Trial Court.

It is clarified that none of the observations made hereinabove shall not be construed to be a reflection on merits of the case. The same are confined for the purpose of decision of the present petition and shall have no bearing on the trial.

March 8 , 2017.
'om'

(**LISA GILL**)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No